

**DRAFTING FOR RELIGIOUS &  
PHILOSOPHICAL PREFERENCES**

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## **DRAFTING FOR RELIGIOUS & PHILOSOPHICAL PREFERENCES**

### **I. INTRODUCTION**

When drafting for a client's religious or philosophical preferences, the goal is to accommodate the client's religious views and values in documents that typically fall short on their own. In the absence of specificity, the client's wishes may not be able to be carried out or even known.

Oftentimes, starting the conversation can be intimidating or uncomfortable. Estate planners know how to discuss powers of attorney, wills, trusts, probate, taxes, and the like. But sometimes they do not approach the more personal topics, such as a client's religious preferences, particularly if they could fall outside of the attorney's own religious faith.

The objective of this article is to provide its reader with some technical background and practical tools to at least help start the conversation. It will cover the statutes, drafting considerations, and a non-exhaustive overview of some religious customs and requirements for:

- Funeral and burial preferences;
- Medical powers of attorney;
- Directives to physicians and end-of-life decisions;
- Organ and tissue donation;
- Last wills and testaments; and
- Trusts.

It is important to keep in mind that within each faith there can be a variety of beliefs, and authorities may not always agree on what is allowed and what is not. Some religions have published standardized forms for directives to physicians or medical powers of attorney, while others have official proclamations on these topics as well as organ donation. Though drafting language is suggested throughout this article, it should only be used as a starting point for further discussion with the client. For more information on the various religious views, see "Conform Health Care Directive to Client's Religious Views," by Wendy S. Goffe, *ESTATE PLANNING JOURNAL (WG&L)* Vol. 39, No. 2 (February 2012).

### **II. FUNERAL AND BURIAL PREFERENCES**

The following provides a review of the Texas statutes that address funeral and burial rights and an overview of certain religious customs or requirements.

#### **A. Statutory Defaults**

Tex. Health & Safety Code §711.002(a) sets forth the priority of persons who have the right to control the disposition, including cremation, of a decedent's remains as:

1. The person designated in a written instrument signed by the decedent;
2. The decedent's surviving spouse;
3. Any one of the decedent's surviving adult children;
4. Either one of the decedent's surviving parents;
5. Any one of the decedent's surviving adult siblings; or
6. Any adult person in the next degree of kinship in the order named by law to inherit the estate of the decedent.

The statute also gives those persons the *duty* to inter the remains and makes them *liable* for the reasonable cost of interment. However, a person listed above may not control the disposition of the decedent's remains if, in connection with the decedent's death, an indictment has been filed charging the person with a crime under Chapter 19, Penal Code, that involves family violence against the decedent. Tex. Health & Safety Code 711.002(1).

If the person with the right to control the disposition of the decedent's remains fails to make final arrangements or appoint another person to make final arrangements for the disposition before the earlier of the sixth day after the date the person received notice of the decedent's death or the tenth day after the date the decedent died, the person is presumed to be unable or unwilling to control the disposition. In that case, the person's right to control the disposition is terminated and passes to any other person in the same priority class or to a person in the next priority class. Tex. Health & Safety Code §711.002(a-1).

#### **B. Drafting Considerations**

##### **1. Appointment of an Agent**

Tex. Health & Safety Code §711.002 provides for the appointment of an agent to control the disposition of remains. See attached Appendix A for a sample form. Tex. Health & Safety Code §711.002(b).

A written instrument to appoint an agent is legally sufficient under the statute if the wording of the document complies substantially with the sample form under Section 711.002(b), is properly completed, is signed by the decedent, the agent, and each successor agent, and the signature of the decedent is acknowledged. The instrument may be modified or revoked only by a subsequent written instrument that complies with the statute. See Tex. Health & Safety Code §711.002(c).

##### **2. Specific Written Directions**

A person may also provide written directions for the disposition, including cremation, of the person's remains in a last will and testament, a prepaid funeral contract, or a written instrument signed and

acknowledged by such person. Tex. Health & Safety Code §711.002(g). The directions can also govern the inscription to be placed on a grave marker and in which plot the decedent is subsequently interred. *Id.*

The directions may be modified or revoked only by a subsequent writing signed and acknowledged by such person. The person otherwise entitled to control the disposition of a decedent's remains under the statute shall "faithfully carry out the directions of the decedent to the extent that the decedent's estate or the person controlling the disposition are financially able to do so." *Id.* Furthermore, if the directions are in a will, they are to be carried out immediately without the necessity of probate. If the will is not probated or is declared invalid for testamentary purposes, the directions are valid to the extent to which they have been acted on in good faith. *Id.*

Some questions the practitioner (or the client questionnaire) should ask are:

1. Does the client wish to name an agent (and alternates) to control the disposition of his/her remains?
2. Is the agent familiar with the client's religious and moral beliefs?
3. Does the client wish to provide specific written directions for his/her burial or cremation?
4. Does the client have any moral or religious convictions regarding the disposition of his remains or that dictate the use or rejection of certain forms of burial preparations?
5. Does the client have any preferences concerning his funeral provider, cemetery, or mausoleum?
6. Does the client have any preferences concerning his funeral or memorial services? Grave marker? Plot?

### **C. Religious Laws and Customs**

The following takes a brief look at some of the more notable funeral and burial rules and customs. They are listed in no particular order, other than alphabetically.

#### **1. Baha'i Faith**

Baha'i law requires the burial to take place within a traveling distance of one hour from the place of death and as soon as possible after death. The following are sample instructions based upon Baha'i traditions more common in Western culture:

*"I direct that all burial and funeral arrangements conform to Baha'i law and tradition, and shall include: No cremation or embalming, unless required by applicable law. My body should be buried in a white cotton or*

*silk sheet in accordance with Baha'i custom. My body should be buried in a durable casket made from crystal, hard resistant stone, or hard wood. My body should be buried, to the extent feasible, within one hour's traveling distance from the place of my death. I should have a special engraved Baha'i burial ring placed on my finger bearing the inscription: "I came forth from God and return unto Him, detached from all save Him, holding fast to His name, the Merciful and the Compassionate." The Baha'i Prayers for the Dead should be recited at my funeral."*

For more background regarding this faith, see Appendix D-3.

#### **2. Buddhism**

Buddhism in general does not require either burial or cremation. More often, the culture or region where a Buddhist lives dictates this. The Buddhist custom is to avoid removing the body from the place of death for at least seventy-two hours to seven days, depending on the tradition. The belief is that the decedent's spirit remains with the body until rebirth, which occurs within seven days, so the body should not be moved or tampered with during this time. Because of the inability to follow this custom in a hospital or other institutional setting, oftentimes a Buddhist will make an effort to spend his or her final days at home. If incorporated into a health care power of attorney, this wish is more likely to be respected.

#### **3. Catholicism**

Early Christians opposed cremation because pagans often cremated their dead as a sign of disdain for the Christians' belief in the physical resurrection of the body. To protect its belief in this doctrine of faith, the Church forbade cremation. That prohibition was lifted in 1963, so Catholics may be cremated so long as it does not demonstrate a denial of belief in the resurrection of the body. Although cremation is permitted, Catholic teaching continues to stress the preference for burial or entombment of the body of the deceased. The Catholic Church prefers and urges that the body be present during the Vigil (wake) and Funeral Mass, and if cremation is to be used, that it take place following the Rite of Final Commendation. The cremated human remains would then be interred during the Rite of Committal. The cremated remains are to be buried or entombed, preferably in a Catholic cemetery. Scattering, dividing, or keeping cremated remains in the home are not considered to be reverent dispositions under the Catholic Church's teachings.

4. Eastern Orthodox Church

In the Orthodox faith, cremation is generally prohibited, but exceptions can be made where a non-Orthodox spouse has a different preference. In addition to a church funeral, there is often a memorial service on the fortieth day and sixth month following death and annually thereafter.

5. Hinduism

According to Hindu law, the body should be cremated within twenty-four hours of death. Various ceremonies and rites are performed after the death in order that the departed soul may rest in peace. After cremation, the ashes are to be immersed in a holy river, ideally the Ganges.

6. Islam

In the Islamic faith, there is a requirement not to do anything that desecrates the body. The body is considered to continue to contain the person. Thus disfiguring the dead in any way is not permitted, and no autopsy or embalming should be done on the body unless required by law. Cremation is not allowed. After death, the body is not to be left alone until it is buried by placing it into the ground without a coffin. Appendix B contains sample language for Islamic funeral and burial instructions.

7. Judaism (Orthodox)

Pre-arrangements are usually made with a burial society, known as the “Chevra Kadisha,” for the handling and disposition of the body of an Orthodox Jew after death. If so, the client should advise his or her agents of such arrangements.

8. Mormonism

Contrary to the statement below, the Mormon Church counsels its members to avoid cremation, unless required by law, and if possible, to bury their dead in the earth to return dust to dust.

9. Protestantism

Most Protestant faiths do not believe that resurrection involves making the physical body whole again. Hence, Protestant faiths in general tend to support cremation, including Jehovah’s Witnesses.

**III. MEDICAL POWERS OF ATTORNEY**

The following takes a look at medical and health care powers of attorney and how they might need to address religious and philosophical preferences.

**A. Statutory Provisions**

The medical power of attorney statutes (also called “medical directives”) are found in Chapter 166, Subchapter D of the Texas Health and Safety Code

(§166.151 *et seq.*). The statutory form itself is set forth in Section 166.164. The agent has the authority to make “any and all” health care decisions for the principal. The statutory exceptions to an agent’s powers are:

- voluntary inpatient mental health services;
- convulsive treatment;
- psychosurgery;
- abortion; or
- neglect of the principal through the omission of care primarily intended to provide for the comfort of the principal.

Tex. Health & Safety Code §166.152(f). The statutes (and the form) also allow for the principal to specify additional limitations on the agent. In the absence of a directive to physicians, the agent under a medical power of attorney can make end-of-life decisions for the principal. Additionally, Tex. Health & Safety Code §166.152(e) provides:

(e) After consultation with the attending physician and other health care providers, the agent shall make a health care decision:

(1) according to the agent's knowledge of the principal's wishes, *including the principal's religious and moral beliefs*; or

(2) if the agent does not know the principal's wishes, according to the agent's assessment of the principal's best interests.

[emphasis added.] Tex. Health & Safety Code §166.158(b) further provides:

(b) The attending physician does not have a duty to verify that the agent's directive is consistent with the principal's wishes or religious or moral beliefs.

In the absence of a medical power of attorney, the Consent to Medical Treatment Act provides who may make medical decisions on behalf of an adult patient who is incompetent and in a hospital, nursing home, or county or city jail, or is receiving services from a home and community support services agency. Tex. Health & Safety Code §313.001 *et seq.* The surrogate decision-maker must base his decisions on knowledge of what the patient would desire, if known. Tex. Health & Safety Code §313.004(c).

**B. Drafting Considerations**

Most clients choose to address their religious or philosophical preferences relating to health care decisions by simply choosing an agent whom they feel has the same beliefs or knows the principal’s beliefs well enough. In those cases, they may not wish to

specify their preferences in writing, relying instead on the relationship they have with the named agent.

While this can work in many cases, there can be circumstances where written specificity may be best. For example, when the client has an unusual request or when the client is otherwise concerned that a physician or family member may challenge the agent's decisions. Another instance may be when the client has specific preferences concerning health-care facilities or providers.

An initial recital could be incorporated into a client's medical power of attorney that affirms his or her affiliation with the particular religion or faith in order to help guide the agent. Consider adding a provision that states:

*"Any decision to be made hereunder shall be made in accordance with the laws and customs of the \_\_\_\_\_ faith [insert name of religion]."*

To add more specificity, some questions the practitioner (or the client questionnaire) should ask are:

1. Whom does the client wish to name as his agent and successor agents?
2. Is the agent familiar with the client's religious and moral beliefs?
3. Does the client have any specific preferences concerning health-care facilities or providers?
4. Does the client have any moral or religious convictions that dictate the use or rejection of certain forms of medical treatment?
5. Does the client want to make anatomical gifts or give the agent the power and authority to make these gifts?
6. Does the client want to authorize the agent to determine who will visit the client?

### **C. Religious Laws and Customs**

#### **1. Baha'i Faith**

Because of this faith's many laws, principles, and customs, it is most important that a Baha'i follower have a medical power of attorney appointing agents familiar with the issues involved.

#### **2. Buddhism**

Many Buddhists are very strict vegetarians out of compassion for animals and other living beings, which should also be noted in their health care documents, given that medications can often be made with animal products.

#### **3. Christian Science**

Adherents of the Church of Christ Scientist (Christian Science) believe healing occurs and illness

can be overcome through spiritual means. While Christian Scientists typically choose prayer for healing themselves and their children, individuals are free to choose whatever form of treatment or care they feel will best meet their needs. In a medical power of attorney, a Christian Scientist should expressly address preferences regarding treatment provided by an accredited Christian Science Practitioner, nursing care provided by an accredited Christian Science Nurse, or by an individual who is approved by an accredited Christian Science Nurse or Christian Science Practitioner. Because the Church does not coerce members to forego medical treatment, it is important to address the extent to which a follower wishes or does not wish medical treatment, specifically addressing palliative care and pain relief.

#### **4. Hinduism**

Generally, Hindus are vegetarians. The Hindu religion calls for certain fasting days and the avoidance of certain foods during certain periods, including funeral ceremonies. A follower may want this mentioned in a medical power of attorney.

#### **5. Islam**

Islamic law allows for proxy decision making by family members, but no one individual is to be given decision-making authority. Muslims generally defer to the decisions of health care providers and close family members, often parents, rather than the previously expressed opinion of the patient in an advance directive or the decision of any one individual.

#### **6. Jehovah's Witness**

While beliefs vary, most followers generally do not have blood transfusions or transfusions of any blood products, even of their own stored blood. Because of their strict beliefs against the use of blood and blood products, a follower's medical power of attorney can differ markedly from the statutory form. Suggested language can include:

*"I am one of Jehovah's Witnesses, and I direct that NO TRANSFUSIONS of whole blood, red cells, white cells, platelets, or plasma be given to me under any circumstances, even if healthcare providers believe that such are necessary to preserve my life. I further refuse to pre-donate and store my blood for later infusion."*

Because of the extent to which a Jehovah's Witness medical power of attorney differs from a statutory form, the practitioner should discuss with the client adding the following release language:



*“...Therefore, I release all health care providers and their personnel from liability for any damages that may result from honoring the terms of paragraph \_\_\_\_\_ of this medical power of attorney, despite their otherwise competent care.”*

#### **IV. DIRECTIVES TO PHYSICIANS AND END-OF-LIFE DECISIONS**

The precepts of a client's religion – or simply his own personal preferences – can conflict with standard clauses in directives regarding end-of-life treatment. The following examines advance directives regarding life-sustaining treatment and how they should address religious and philosophical preferences, with particular emphasis on comfort care and pain control.

##### **A. Statutory Provisions**

The Advance Directives Act is found in Chapter 166 of the Texas Health and Safety Code (§166.001 *et seq.*). It covers directives regarding life-sustaining treatment in the event of a terminal or irreversible condition, medical powers of attorney, and out-of-hospital DNR (“do not resuscitate”) orders. The following reviews the first of these also known as “directives to physicians and family or surrogates,” the statutes for which are contained in Subchapter B of Chapter 166 of the Texas Health and Safety Code. The statutory form itself is set forth in Section 166.033 of the Texas Health and Safety Code. It is commonly referred to as a “living will.”

Unlike a standard medical power of attorney, a directive to physicians is all about specifying the client’s preferences when it comes to life-sustaining treatment. First, the client can specify whether or not he wants life-sustaining treatment in the event of a terminal condition. Second, the client can specify whether or not he wants life-sustaining treatment in the event of an irreversible condition. The directive, however, has no effect if the patient is pregnant. Tex. Health & Safety Code §166.049. “Life sustaining treatment” means:

...treatment that, based on reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support such as mechanical breathing machines, kidney dialysis treatment, and artificial hydration and nutrition. The term does not include the administration of pain management medication, the performance of a medical procedure necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.

Tex. Health & Safety Code §166.002(10) [emphasis added]. “Artificial nutrition and hydration” means the provision of nutrients or fluids by a tube inserted in a vein, under the skin in the subcutaneous tissues, or in the stomach (gastrointestinal tract). Tex. Health & Safety Code §166.002(2).

In the absence of a written directive to physicians, a competent adult patient can declare or “issue” a non-written directive in the presence of the attending physician and two witnesses who qualify under Section 166.003, at least one of whom must be a witness who qualifies under Section 166.003(2). Tex. Health & Safety Code §166.034. Otherwise, the agent under a medical power of attorney can make such end-of-life decisions for the principal to withhold or withdraw life-sustaining treatment. Tex. Health & Safety Code §166.039(a). If the patient has no directive to physicians, no medical power of attorney, and no legal guardian, then the attending physician and one person, if available, from one of the following categories, in the following priority, may make a treatment decision that may include a decision to withhold or withdraw life-sustaining treatment:

- (1) the patient's spouse;
- (2) the patient's reasonably available adult children;
- (3) the patient's parents; or
- (4) the patient's nearest living relative.

Tex. Health & Safety Code §166.039(b). In any case, a treatment decision made by a surrogate must be based on knowledge of what the patient would desire, if known. Tex. Health & Safety Code §166.039(c).

Texas law also allows the following persons to execute a directive on behalf of a qualified patient who is younger than 18 years of age:

- (1) the patient's spouse, if the spouse is an adult;
- (2) the patient's parents; or
- (3) the patient's legal guardian.

Tex. Health & Safety Code §166.035. Ultimately, however, the desire of the patient, including one younger than eighteen, supersedes the effect of a directive. Tex. Health & Safety Code §166.037.

##### **B. Drafting Considerations**

If a client’s religious faith dictates certain rules for end-of-life care, then he should specify such in his directive to physicians. The client should never assume that his agent or family will know what to do. In addition to religious beliefs, many patients are influenced by cultural norms with respect to their views on end-of-life care, suffering, and prolonging the

inevitable death. Accordingly, the practitioner should consider discussing the client's preferences regarding:

- Whether the directive should require a second medical opinion as to whether the patient has a terminal or irreversible condition;
- Whether the directive should require a second opinion as to whether the patient is incompetent or otherwise mentally or physically incapable of communication (and/or specify who is in charge of making that determination);
- Whether a specified amount of time should pass before withdrawing life support;
- Artificial nutrition and hydration;
- Intravenous antibiotics and/or any other particular treatments;
- The desire to maintain consciousness;
- Certain types of pain control or treatments;
- The desire to die at home; and
- Reiteration of the desire or non-desire to donate one's organs or tissue (discussed more below).

### **C. Religious Laws and Customs**

#### 1. Baha'i Faith

There are no objections in the Baha'i faith to the removal of life support. However, because of this faith's many laws, principles, and customs, it is most important that a Baha'i follower have a living will, setting forth the religious and personal decisions as guidance for the agent.

#### 2. Buddhism

Buddhists do not believe in suffering unnecessary pain. However, they do believe in dying consciously with a calm mind. A Buddhist believes that his state of consciousness at the moment of death strongly influences his rebirth in the next life, which could be undermined by pain relief. Thus, it is important that the living will convey the client's desire for consciousness.

#### 3. Catholicism

Catholics may not forgo ordinary means of care, which typically includes nutrition and hydration. An agent should not deny nutrition and hydration if they are capable of sustaining human life and as long as there is sufficient benefit to outweigh the burdens (e.g., suffering) to the patient. A Catholic can forgo the use of extraordinary care that prolongs life in the case of a terminal illness. Extraordinary care refers to measures to prolong life but that otherwise offer no reasonable hope for recovery or that involve excessive hardship. Pain control is not prohibited, but any type of pain relief that would accelerate death should not be

administered. Last rites, which include confession of one's sins and receipt of Holy Communion prior to death, require consciousness. Thus, while pain control is not prohibited, these conflicting desires need to be taken into account. As with Orthodox Christians, it is important to describe the types of last rites an individual desires and the wish for lucidity during that period. Consider adding the following to the directive to physicians:

*"I wish to have appropriate pain-alleviating medicine to make me comfortable, except if it would actively hasten my death. I also direct that consideration be given to allow me to remain conscious prior to my death in order to be able to participate in accepting Holy Communion and making a final confession of my sins."*

*"I wish to receive nutrition and hydration when they are capable of sustaining life, as long as this is of sufficient benefit to outweigh the burdens involved to me."*

#### 4. Christian Science

Because the Church does not coerce members to forego medical treatment, it is important to address the extent to which a follower wishes or does not wish medical treatment, specifically addressing palliative care and pain relief.

#### 5. Eastern Orthodox Church

As long as there is a reasonable hope that medical treatment can have a therapeutic effect, life-support should not be withheld or removed. Once no therapeutic outcome is expected, life-sustaining treatment can cease, and palliative care may be administered. However, an attempt to keep the patient conscious (even if the result is pain) should be made to administer the sacraments of Holy Confession and Holy Eucharist. After that, greater pain control may be provided. Therefore, it is important to describe the types of last rites an individual desires and the wish for lucidity during that period.

#### 6. Hinduism

While taking medication and receiving health care is permitted, supporting life artificially is generally not allowed in the Hindu faith. For example, Hindus generally do not want to be kept indefinitely on a respirator because it interferes with the natural life cycle. Also, because Hindus believe in reincarnation, they ideally strive to maintain consciousness, if possible, at the time of death. Thus, it is important that the living will convey the client's desire for consciousness.

According to Hindu tradition, it is not considered proper to die in a bed. These customs cannot always be carried out in a health care facility, thus Hindus may often wish to spend their last days at home.

### 7. Islam

While Islamic law permits the use of living wills, Muslims generally defer to the decisions of health care providers and close family members, often parents, rather than the previously expressed opinion of the patient in a directive to physicians or the decision of any one individual. If medical treatment and heroic measures would merely keep a person alive but would not restore the person to health, then all medical intervention may be (but is not required to be) discontinued. Muslims need to recite a confession before death, so it is important to maintain consciousness until this has been carried out.

### 8. Jehovah's Witness

Jehovah's Witnesses do not limit the use of pain control or palliative care.

### 9. Judaism (Orthodox)

The refusal of food and water is generally not permitted. According to some authorities, food and water are considered supportive care that must be given and not medical treatment which can be refused. However, there are cases where Jewish law allows withdrawing or foregoing artificial nutrition and hydration when, for example, the side effects of a feeding tube may be inherently harmful, even though the result is likely death. Therefore, great care must be taken when making general statements concerning nutrition and hydration.

### 10. Judaism (Conservative)

The Conservative movement values the autonomy of a patient to make decisions about treatment when risk or uncertainty is involved and allows terminally ill patients to rule out certain treatment options (e.g., those with significant side effects) and to forgo mechanical life support in favor of choosing hospice care as a treatment option. However, two differing positions exist within Conservative Judaism.

One position is that all nutrition, hydration, and medication should be provided whenever these are effective measures for sustaining life. Some medical interventions, however, do not sustain life so much as they prolong the dying process, and are therefore not required. Treatment may also be avoided if it would cause fear, risk, or pain in the remaining moments of life, but it may not be avoided in an attempt to speed up one's death.

The other position grants greater latitude to the patient who wishes to forego life-sustaining measures. For example, in the case of a terminal illness, a patient might be justified in deciding that a treatment that extends life without hope for a cure would not benefit him or her and may be forgone.

### 11. Mormonism

Mormons believe that when dying becomes inevitable, death should be looked upon as a blessing and a purposeful part of an eternal existence. Though against euthanasia, members are not obligated to extend their mortal life by means that are unreasonable. These judgments are encouraged to be made by family members after receiving medical advice and seeking divine guidance through fasting and prayer. Like many other denominations, the Mormon Church does not believe that allowing a person to die from natural causes by removing him or her from artificial life support, as in the case of a long-term illness, falls within the definition of euthanasia.

### 12. Protestantism

Because of the many different Protestant denominations, there is no universal mandate concerning end-of-life decisions. Generally, Protestant faiths respect a person's right to make decisions regarding his or her own body. Individuals are encouraged to discuss with their family and spiritual leaders end-of-life decisions rather than make those decisions autonomously, but also to execute a directive that expresses any wish for non-intervention.

## **V. ORGAN AND TISSUE DONATION**

The following reviews how to be an organ donor and how to prepare an organ donation document in Texas that can be customized to take into account religious and philosophical preferences.

### **A. Statutory Provisions**

The Revised Uniform Anatomical Gift Act is found in Chapter 692A of the Texas Health and Safety Code. It provides that a donor can declare "in advance" his intent to make an anatomical gift by any of these means:

- (1) A statement or symbol imprinted on the donor's driver's license or identification card;
- (2) In a will;
- (3) During a terminal illness or injury of the donor, by any form of communication addressed to at least two adults, at least one of whom is a disinterested witness; or

- (4) Through a donor card or other record signed by the donor or other person making the gift or by authorizing that a statement or symbol indicating the donor has made an anatomical gift be included on a donor registry. If the donor or other person is physically unable to sign a record, the record may be signed by another individual at the direction of the donor or other person and must be witnessed by at least two adults (at least one of whom is a disinterested witness) who have signed at the request of the donor or the other person and state that the record has been signed and witnessed as provided above.

Tex. Health & Safety Code §692A.005. Revocation, suspension, expiration, or cancellation of a driver's license or identification card on which an anatomical gift is indicated does not invalidate the gift. Furthermore, an anatomical gift made in a last will and testament takes effect on the donor's death *whether or not the will is probated*. Even invalidation of the will after the donor's death does not invalidate the gift. *Id.*

Section 521.401 of the Texas Transportation Code mirrors the above provisions by stating that a person who wishes to be an eye, tissue, or organ donor may execute a statement of gift. The statement of gift may be shown on a driver's license or personal identification certificate or by a card designed to be carried by the donor to evidence the donor's intentions with respect to organ, tissue, and eye donation. A donor card signed by the donor shall be given effect as if executed pursuant to Section 692A.005 of the Health and Safety Code.

An adult, an emancipated minor, an agent of the donor (unless the medical power of attorney or other record prohibits the agent from making an anatomical gift), a parent of an unemancipated minor, or the donor's legal guardian of the person may make the anatomical gift under one of the appropriate methods described above. Tex. Health & Safety Code §692A.004. A minor can also donate if he or she is authorized under state law to apply for a driver's license (i.e., is at least 16 years of age) and:

- circumstances allow the donation to be actualized prior to 18 years of age; and
- an organ procurement organization obtains signed written consent from the minor's parent, guardian, or custodian.

*Id.* It is perhaps just as important to note that the statute also addresses how one can *refuse* to make an anatomical gift. It provides that an individual may refuse to make an anatomical gift by:

- A record signed by the individual;

- A record signed by another individual acting at his direction if he is physically unable to sign to be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the individual and state that the record has been signed and witnessed as provided above;
- The individual's will, whether or not the will is admitted to probate or invalidated after the individual's death; or
- Any form of communication made by the individual during the individual's terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.

Tex. Health & Safety Code §692A.007. An individual's unrevoked refusal to make an anatomical gift bars all other persons from making a gift of the individual's body or part, except an unemancipated minor's parent can revoke the minor's refusal after the minor dies. Tex. Health & Safety Code §692A.007(f) and (h).

The anatomical gift or refusal document does not need to be delivered during the donor's lifetime to be effective. On or after an individual's death, a person in possession of an anatomical gift or refusal document with respect to the individual shall allow examination and copying of the document by a person authorized to make or object to the making of an anatomical gift with respect to the individual or by a person to which the gift could pass under Section 692A.011. Tex. Health & Safety Code §692A.013.

If no "advance" declaration is made and no refusal is made, then any member of the following classes of persons who is reasonably available, in the order of priority listed, may make the gift:

- an agent of the decedent at the time of death who could have made an anatomical gift under Section 692A.004(2) immediately before the decedent's death;
- the spouse of the decedent;
- adult children of the decedent;
- parents of the decedent;
- adult siblings of the decedent;
- adult grandchildren of the decedent;
- grandparents of the decedent;
- an adult who exhibited special care and concern for the decedent;
- the persons who were acting as the guardians of the person of the decedent at the time of death;
- the hospital administrator; and
- any other person having the authority to dispose of the decedent's body.

Tex. Health & Safety Code §692A.009. This is done by a document signed by the person making the gift or by that person's oral communication that is electronically recorded or is contemporaneously reduced to a record and signed by the individual receiving the oral communication. Tex. Health & Safety Code §692A.010(a).

### **B. Drafting Considerations**

Certainly the simplest way a client can make an anatomical gift is to note such on his driver's license or identification card when applying for one or renewing one at the local Department of Public Safety (DPS) office, or it can be done through a donor registry card.

Texas' statewide donor registry is a non-profit organization known as the "Glenda Dawson Donate Life-Texas Registry." It maintains a statewide Internet-based registry of organ, tissue, and eye donors. Its homepage is at [www.donatelifetexas.org](http://www.donatelifetexas.org) and allows anyone to easily register online and then download a donor certificate. Signatures of the donor and witnesses are no longer required, but minors must have the registration certified by a parent or legal guardian. The online registration constitutes a legal document under Texas law and remains binding after the donor's death. Donors can also submit information in writing directly to the Donate Life organization to be included in its Internet-based registry. *See* Tex. Health & Safety Code §692A.020. The Texas Department of State Health Services maintains the donor registry. Only professionals from the state's organ procurement organizations and tissue and eye banks can access the information in the database.

If one registers to be a donor when applying for or renewing a driver license or identification card at the local DPS office, there will be an organ donor indicator on the driver's license or identification card. No further action is required on the donor's part because DPS shares with the Donate Life registry the relevant information in its possession of the person's desire to make an anatomical gift on his driver's license or identification card application.

If a donor changes his mind about organ donation after registering online or in person at a DPS office, or if he wants to modify or update his donor information, he can do so through the registry's website.

Though the Donate Life registry's website allows the donor to specify which organs and tissues he wants to donate (through a check-the-box approach), the client needs to understand that he or she is making a gift of all or part of the body to take effect after the donor's death for the purpose of transplantation, therapy, research, or education. If the client wishes to be more specific or set forth his intent to refuse to be a donor, then he should incorporate his wishes regarding anatomical gifts into a directive to physicians, a

medical power of attorney, and/or burial or cremation instructions or other signed "record" (per the statute set forth above) to make sure that these wishes are known. Although Texas law allows anatomical gift instructions to be part of a last will and testament, the will is oftentimes not read by the family until long after death and, therefore, is perhaps not the best device for these purposes.

In order to begin preparing a customized anatomical gift or refusal document, some primary questions to cover with a client are:

- Is organ or tissue donation desired by the client and allowed under his religion?
- If allowed, is it restricted to transplantation only? For family only? For teaching, research, or experimentation?
- Has the client previously registered as a donor or made a record of his intent to donate?
- Does the client wish to customize what organ(s) and tissue(s) will be or not be donated?
- Does client wish to name:
  - an organ procurement organization to be used for transplantation, therapy, research, or education;
  - a hospital to be used for research;
  - a designated individual as the recipient of the part;
  - an eye bank or tissue bank;
  - a forensic science program at a general academic teaching institution (as defined by Section 61.003, Education Code), or a private or independent institution of higher education (as defined by Section 61.003, Education Code); or
  - the Anatomical Board of the State of Texas.

Note that a gift of a whole body must be coordinated through the Anatomical Board of the State of Texas. Tex. Health & Safety Code §692A.011. If a document of gift specifies only a general intent to make an anatomical gift by words such as "donor," "organ donor," or "body donor," or by a symbol or statement of similar import, the gift may be used only for transplantation or therapy, and the following rules apply:

- (1) if the part is an eye, the gift passes to the appropriate eye bank;
- (2) if the part is tissue, the gift passes to the appropriate tissue bank; and
- (3) if the part is an organ, the gift passes to the appropriate organ procurement organization as custodian of the organ.

Tex. Health & Safety Code §692A.011(h) and (i). Appendix C contains sample anatomical gift language.

The drafts person must be careful to avoid language in a medical power of attorney or in a directive to physician that conflicts with an anatomical gift document. If the conflict cannot be resolved, an expedited review of the matter must be initiated by an ethics or medical committee of the appropriate health care facility. Tex. Health & Safety Code §692A.021(c).

### **C. Religious Laws and Customs**

#### **1. Baha'i Faith**

Organ donation for transplantation and medical research is permitted and is viewed as a form of charity.

#### **2. Buddhism**

Because the body is not to be disturbed for a certain period, depending on the tradition, organ donation is problematic but not prohibited.

#### **3. Catholicism**

Organ donation is neither required nor prohibited by the Catholic Church, although it is viewed as a charitable act. Therefore, the principal may express a desire to donate, or not to donate organs, for transplantation or experimentation.

#### **4. Christian Science**

For Christian Scientists, organ and tissue donation, (and whether to accept such a donation) is an individual decision. Therefore, it is important to address the extent to which a follower wishes to donate his or her organs or tissue to another or for experimentation.

#### **5. Easter Orthodox Church**

Although nothing in the Orthodox tradition requires one to donate his organs, this practice is encouraged. The church finds it acceptable if the deceased donor had willed such action or if the surviving relatives permit it under the belief that it was in accord with the decedent's desires.

#### **6. Hinduism**

Organ donation is not prohibited by Hindu law. Rather, it is viewed as an individual's decision.

#### **7. Islam**

Organ transplantation is practiced in almost all Muslim countries. This generally involves kidney donations from living relatives, but cadaverous donation is increasing. Because there are various opinions on this matter, consulting one or more Imams

(i.e., religious scholars/leaders) for clarification should be recommended to the client.

#### **8. Judaism**

Some in the Jewish faith perceive that organ donation is improper, and the body should be buried whole. This is not a uniform belief, and many see organ donation as not only permitted but encouraged where the organs are used to save a life or improve a donee's health. Many do believe, however, that donation for research is improper. Consider a provision that states either:

*"I desire to make anatomical gifts that will take effect at my death for the sole purpose of transplant to save another's life."*

or

*"I desire to make anatomical gifts that will take effect at my death for the sole purpose of transplant to save the life of a family member of any needed organs and tissues."*

#### **9. Protestantism**

Most Protestant faiths do not believe that resurrection involves making the physical body whole again. Thus, most Protestant faiths tend to encourage organ and tissue donation.

## **VI. LAST WILLS AND TESTAMENTS**

### **A. Preambles**

When preparing a Last Will and Testament, the primary focus is on distributing money, property and other possessions and appointing fiduciaries to carry out those plans. A religious testament or preamble allows the client to also share his beliefs. It is permissible to include a religious preamble as part of a last will and testament, but the drafts person must be careful not to contradict the terms of the will or create any ambiguities.

Some religions encourage or may even require such a testament (e.g., the Baha'i faith) and some provide suggested language to use. Even if not required by their faith, those with deep convictions may want to use their wills as a last acknowledgement of their beliefs as well as a guide for how they want their family and fiduciaries to conduct themselves. Because a will is filed in probate court after the testator's death, a religious preamble becomes a public record, which is appealing to some.

The appendices contain samples of preambles for the following faiths:

- Christianity (Appendix D-1)
- Islam (Appendix D-2)
- Baha'i (Appendix D-3)

These samples are by no means purported to be the “official form” of any particular faith, but are ones seen with some frequency in the estate planning practice. The Lutheran faith, in particular, encourages the use of a Christian preamble, which is the basis of the sample language provided in Appendix D-1. The client will oftentimes provide the language for the preamble or it is available from his religious leader, so it may be tempting not to study it. Nevertheless, it is critical to know and ask questions about its meaning to avoid conflicts with the rest of the will’s provisions.

Some clients may have personal “spiritual” views not set forth by any one religion but which they want to express in their wills. Closely working with the client to set forth those views in a manner consistent with the dispositive provisions of the will (and in a manner that would not raise questions as to the testator’s capacity) can be just as important to that client as any other provisions the attorney drafts for him.

## **B. A Special Look at Judaism**

Most religions give their followers the freedom to dispose of their assets upon death as they see fit. It is notable, however, that Jewish religious law does not recognize the validity of a last will and testament. Except for unusual circumstances, one cannot arrange for his estate to be divided in a manner different from Torah law which provides for the automatic nature of succession and the order of priority in which heirs inherit a decedent’s estate. However, by creating a conditional obligation or inter vivos gifts or trusts, one may achieve the same net result as that of a will in a way which conforms to Torah law.

### 1. The Basic Rules

The Torah devotes six verses to the laws of inheritance (*Bamidbar* 27:5-11), setting forth the procedure for the disposition of estates, briefly summarized as:

First, when male offspring exist, they are invariably the exclusive heirs of their father’s estate.

Second, the Torah awards women no rights of inheritance as long as there are male heirs in the same class. Daughters do not inherit if there are sons, nor sisters if there are brothers. Also, only paternal relatives can be considered heirs.

Third, in the absence of sons, daughters (and their offspring) are exclusive heirs.

Fourth, children who die before their father are replaced by their qualified heirs. When a decedent leaves no children, his father is the exclusive heir to his estate. If his father is no longer living, his father’s children (the decedent’s paternal brothers) inherit his estate.

Fifth, when the first born is a male, he is entitled to two shares of the tangible assets of the estate, by rule

of *bechora* (progenitor). Originally a widow was only entitled to her *kesuba* of 200 silver pieces. By rabbinical ordinance dating to pre-Talmudic times, her needs and living facilities must be provided for from her husband’s estate until the time that she claims the lump sum due under the *kesuba* or until she remarries.

Sixth, unmarried daughters (up to physical maturity at the age of 12½) are to receive provisions for support and maintenance and for a dowry at their time of marriage, which may run as high as ten percent of the total assets left by the decedent.

Under Jewish law, no last will and testament can alter this succession plan. In other words, a person is not to change the order of inheritance described in the Torah, neither to bequeath a legacy to a person not entitled to inherit, nor to disinherit a person entitled to inherit. In this respect, inheritance differs from the general rule in monetary matters, which allows people to stipulate any conditions or rules of conduct of business they choose. The only modification permitted is to provide a greater share, or even one’s complete estate, to any of the persons entitled to inherit, even though this would disinherit others in the same class, providing that a first-born is not deprived of his right to a double share.

Because all of a decedent’s property automatically transfers to those who would inherit under Jewish law at death (i.e., the decedent’s “*halachic*” heirs), any beneficiaries who take under any other distribution scheme, such as under a will, are effectively stealing from the *halachic* heirs.

### 2. Possible Solutions

Extra caution must be used for an estate planning attorney to assist observant Jewish clients in achieving their legal goals without transgressing their religious obligations. The following have been suggested as solutions to the apparent conflict between secular and Jewish law in estate planning, though, ultimately, the ethical considerations inherent in any approach that circumvents Jewish inheritance law must be considered by the estate planner and client alike. For a more detailed discussion of the conflict and possible solutions, see Benjamin C. Wolf, “*Resolving the Conflict between Jewish and Secular Estate Law*,” 37 Hofstra Law Review 1171 (2009).

The first method offered is the Jewish law doctrine of upholding the last wishes of the deceased. Under this approach, the decedent’s last will and testament is viewed as evidence of his wishes as to the distribution of his property after death. However, many Jewish scholars view it to be inapplicable as a real solution to the conflict between Jewish and secular inheritance law.

The second method considered is the Jewish law principle known as “the law of the land is the law.”

This principle incorporates certain provisions of secular law into Jewish law. If this concept were applicable to inheritance law, it would obviate the conflict between Jewish law and modern estate planning goals under secular law by creating a unity between the two systems. Although some authorities in Jewish law do use this method to address the problem, it is not recognized as a valid solution by the vast majority of Jewish law authorities.

The third method is the establishment of a revocable trust. Under Jewish law, the property that one holds title to at death transfers automatically to his *halachic* heirs. However, any non-probate property, such as property held in trust, would not be subject to automatic transfer because the decedent does not hold title to that property at his death. Even under Jewish law, property would be distributed according to the terms of the trust instrument under which it is held.

The fourth method involves the use of revocable, contingent inter vivos gifts. With this method, the donor executes a gift document indicating that he is giving all of his assets—real, personal, and intangible—to his chosen donees (i.e., non-*halachic* heirs) as of the date of execution, with the stipulation that the gift is only effective one hour before his death and with the right of revocation. This approach should be used in conjunction with a last will and testament because, standing alone, it would be open to challenges under secular law. In order for an inter vivos gift to be upheld, the donee has the burden of proving donative intent, delivery, and acceptance. While the donees may be able to prove donative intent and acceptance easily, delivery will be more difficult to prove. The practical difficulties and certain legal challenges with this approach, however, make it an unreliable avenue to pursue.

The fifth or “indebtedness” method is suggested to be the most practical and legally enforceable method of resolving the conflict for the majority of observant Jewish clients. This method consists of a testator writing a last will and testament and then executing a note of indebtedness to one or more of his non-*halachic* heirs which will become due shortly before his death, but will not be payable if the *halachic* heirs willingly consent to the testator’s distribution plan as described in his last will and testament. If, however, the *halachic* heirs challenge the will’s distribution in a Jewish tribunal (“*beis din*”), the note would be due and owing against the estate and would effectively reduce to nothing the portion they would have received in order to satisfy the debt to the non-*halachic* heirs.

## **VII. TRUSTS**

In addition to a religious preamble like those mentioned in the previous section of this article, clients may wish to elaborate on the “traditional” provisions

of a trust, whether it is revocable or irrevocable, inter vivos or testamentary. This often takes the form of giving the trustee additional instructions regarding how and when distributions should be made to or on behalf of a trust beneficiary, based on the settlor’s religious or philosophical beliefs. If done properly and thoughtfully, this can be a valuable guide for a trustee and the beneficiary.

Note this article does not embark upon drafting “incentive trusts,” which is beyond its scope. For a recent article on incentive trusts, see Marjorie J. Stephens and Lee S. Meyercord, “*Distribution Clauses: Carrying Out the Grantor’s Intent to Protect, Motivate, Empower and Train*,” State Bar of Texas Estate Planning and Probate Drafting Course, Dallas, Texas, October 20-21, 2011 (Chapter 5). Instead, it is merely an overview of some of the more common instances when religious issues (and personal philosophies) may need to be encompassed in trust provisions.

The following is a sample of a settlor’s general request to apply his religious beliefs to the administration of a trust:

*“In making discretionary distributions to the beneficiaries of this Trust, I suggest but do not require that the Trustees consider the following personal directives and goals. It is my express desire that the beneficiaries of this trust be raised in a manner that conforms with and encourages their adherence to the \_\_\_\_\_ faith [insert name of religion]. Therefore, the Trustees may liberally distribute funds for formal religious education as well as informal religious education programs, religious related endeavors, travel and other expenses to promote and foster a knowledge of, respect for, and understanding of the \_\_\_\_\_ faith [insert name of religion], traditions and values. I recognize that in some instances to achieve this goal the Trustees may need to make distributions to or for the benefit of the guardian for a minor beneficiary, and I expressly authorize the Trustee to use its reasonable discretion to do so.”*

Other clients may want to provide more specialized directions. One such instance can involve **tithing**. For example, a settlor of a revocable inter vivos trust may want (or be required by his religion) to ensure that the trustee continue to tithe to his church or religious order in the event he becomes incapacitated. It is also important for federal income, estate, and gift tax purposes that the power to make gifts be specifically given to the trustee (or to an agent under a general or financial power of attorney) in order for the



gifts to be recognized and complete for tax purposes. A settlor of a trust for another may want the same type of provisions, either allowing or perhaps requiring a tithe be made on the beneficiary's behalf, particularly if the beneficiary is incapacitated. The provision should specify:

- How much to tithe.
- To which church/organization/fund.
- How often.
- On whose behalf the contribution is to be made.
- Whether it is mandatory or discretionary; whether the beneficiary's personal needs are paramount.
- Whether the amount can change if the religious order so requires.
- Whether the beneficiary or some other person can set the amount or choose the donee.

A second instance may include the client's preferences for a trust to cease or change its distribution provisions if the beneficiary **divorces, cohabitates, and/or marries outside the faith**. Except for divorce, the trustee's duty to verify whether or not a beneficiary is living with someone in a non-platonic relationship or is married to someone of another faith can be burdensome, so caution should be practiced with such provisions.

A client may want to instruct the trustee to pay for certain **religious education** for a minor or adult beneficiary or to pay for **religious pilgrimages**.

Another instance that arises with great frequency is the client's preferences regarding whether someone outside the family "**bloodlines**" can inherit or be a beneficiary of a trust. This is, perhaps, the most frequent of issues in this realm simply because most people have a personal opinion whether or not adopted persons should inherit the same as natural born heirs, regardless of their religion. Unless specified or defined otherwise, Texas law treats a legally adopted person (whether adopted as an adult or a minor) the same as someone born to that parent. Tex. Family Code §§162.017 and 162.507; Tex. Probate Code §§3(b), 40 and 42; Tex. Trust Code §111.004(3).

Further, certain religions or customs **favor the first born son** with respect to his inheritance. For instance, the client may direct the family home to pass to the first born son. Other times a client may desire to embody their religious precepts in an instruction to the

trustee (and guardian) as to the **manner in which the children should be reared** and as to how trust expenditures for children should be handled.

Yet another example can include setting forth **investment standards** that conform to one's beliefs. A sample provision might be:

*"The Trustee is authorized, but not directed, to structure any investments and assets, to the extent feasible, to be in accordance with the religious principles of the \_\_\_\_\_ faith [insert name of religion]. Such standards may include by way of example, avoiding investments in companies that engage in businesses involving alcohol, gambling, pornography, or armament manufacture. In the event of any uncertainty as to the application of the investment philosophy to this trust, the Trustee's decision shall govern. The Trustee may consult with \_\_\_\_\_ for guidance and for further clarification."*

Of course, drafting special trust provisions should not go so far as to be impractical or impossible to fulfill or be indefensible as against public policy.

## **VIII. CHECKLIST/QUESTIONNAIRE**

Appendix E contains a list of questions the estate planning practitioner can discuss with the client in order to ensure his or her true wishes regarding religious and philosophical preferences are fully and clearly expressed.

## **IX. CONCLUSION**

Client preferences with respect to health care, end-of-life, and estate planning matters can be influenced by a variety of forces, including religion. As this article indicates, religious rules and guidelines on these topics vary and may conflict with the language in standardized forms. While an estate planner is not expected to be an expert in the precepts of any or all religions, he or she can start the conversation and raise questions for the client to consider so, in the end, the documents will satisfy the client's wishes.

In addition to religious beliefs, cultural norms and personal views influence clients' wishes. Therefore, it is important to explore not only religious values with clients but their cultural and individual principles as well.

**APPENDIX A**

**APPOINTMENT OF AGENT TO CONTROL DISPOSITION OF REMAINS**

I, \_\_\_\_\_ of \_\_\_\_\_, Texas (*insert name and address*), being of sound mind, willfully and voluntarily make known my desire that, upon my death, the disposition of my remains shall be controlled by \_\_\_\_\_ (*insert name of agent*) in accordance with Section 711.002 of the Health and Safety Code and, with respect to that subject only, I hereby appoint such person as my agent (attorney-in-fact).

All decisions made by my agent with respect to the disposition of my remains, including cremation, shall be binding.

**SPECIAL DIRECTIONS:**

Set forth below are any special directions limiting the power granted to my agent:

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**AGENT:**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Acceptance of Appointment: \_\_\_\_\_  
(signature of agent)

Date of Signature: \_\_\_\_\_

**SUCCESSORS:**

If my agent dies, becomes legally disabled, resigns, or refuses to act, I hereby appoint the following persons (each to act alone and successively, in the order named) to serve as my agent (attorney-in-fact) to control the disposition of my remains as authorized by this document:

**1. First Successor**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Acceptance of Appointment: \_\_\_\_\_  
(signature of first successor)

Date of Signature: \_\_\_\_\_

**2. Second Successor**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Acceptance of Appointment: \_\_\_\_\_  
(signature of second successor)

Date of Signature: \_\_\_\_\_

**DURATION:**

This appointment becomes effective upon my death.

*(continued on next page)*

**Drafting for Religious & Philosophical Preferences**

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**PRIOR APPOINTMENTS REVOKED:**

I hereby revoke any prior appointment of any person to control the disposition of my remains.

**RELIANCE:**

I hereby agree that any cemetery organization, business operating a crematory or columbarium or both, funeral director or embalmer, or funeral establishment who receives a copy of this document may act under it. Any modification or revocation of this document is not effective as to any such party until that party receives actual notice of the modification or revocation. No such party shall be liable because of reliance on a copy of this document.

**ASSUMPTION:**

THE AGENT, AND EACH SUCCESSOR AGENT, BY ACCEPTING THIS APPOINTMENT, ASSUMES THE OBLIGATIONS PROVIDED IN, AND IS BOUND BY THE PROVISIONS OF, SECTION 711.002 OF THE HEALTH AND SAFETY CODE.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(principal's signature)

State of \_\_\_\_\_

County of \_\_\_\_\_

This document was acknowledged before me on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_ (name of principal).

[notary seal, if any]

\_\_\_\_\_  
(signature of notary)

\_\_\_\_\_  
(notary's printed name)

My commission expires:  
\_\_\_\_\_

## APPENDIX B

### SAMPLE INSTRUCTIONS FOR ISLAMIC FUNERAL AND BURIAL RIGHTS

I ordain that no autopsy or embalming be done on my body unless required by law and that without unjustified delay my body be washed, wrapped with cloth free of any ornaments and other articles, prayed for, then buried, which should all be done by Muslims in complete accordance with Islamic tenets.

I hereby nominate and appoint \_\_\_\_\_ [*e.g. my husband*], residing at \_\_\_\_\_, Texas, to execute these and other necessary provisions for my Islamic funeral and burial. In the event that he shall be unwilling or unable, I nominate and appoint \_\_\_\_\_, residing at \_\_\_\_\_, Texas. In the event both of those individuals shall be unwilling or unable, I nominate and appoint the president of the local Muslim community or association in the area in which I die to execute these funeral and burial provisions.

In the event of legal difficulties in the execution of this Section, I direct the above-named person to seek counsel from the Islamic Society of North America, currently located in Plainfield, Indiana, USA Tel: (317) 839-8157.

I ordain that absolutely no non-Islamic religious service or observance shall be conducted upon my death or on my body.

I ordain that no pictures, crescents or stars, decorations, crosses, flags, or any symbols, whether Islamic or otherwise, or music shall be involved at any stage of the process of conducting my burial or ever be placed at the site of my grave.

I ordain that my body shall not be transported over any unreasonable distance from the locality of my death, particularly when such transportation would necessitate embalming, unless when long distance transportation is required to reach the nearest Muslim cemetery or any other cemetery selected by my Muslim family.

I ordain that my grave shall be dug deep into the ground in complete accordance with the specifications of Islamic practice and that it face the direction of Qiblah (the direction of the city of Mecca in the Arabian Peninsula, towards which Muslims face for prayer).

I ordain that my body shall be buried without a casket or any encasement that separates the wrapped body from the surrounding soil. In the event that local laws require casket encasement, I ordain that such encasement be of the simplest, most modest, and least expensive type possible. I further ordain that the encasement be left open during burial and filled with dirt, unless prohibited by law.

I ordain that my grave shall be level with the ground or slightly mounded, with no construction or permanent structure of any kind over it. The marking, if necessary, should be a simple rock or marker, merely to indicate the presence of the grave. There should be no inscriptions or symbols on the said marking.

**APPENDIX C**

**ANATOMICAL GIFT**

**BY**

**[name of donor]**

In the hope that I may help others, I, \_\_\_\_\_, make this anatomical gift under the Texas Revised Uniform Anatomical Gift Act. If medically acceptable, this gift shall take effect immediately on my death.

1. I give any needed organs or parts of my body to any qualified hospital, surgeon, physician, coroner, medical school, chiropractic school, dental school, college, or university (“donee”) for medical or dental education, research, therapy, transplantation, or advancement of medical or dental science or for such uses as the donee shall see fit with regard to all or any part of this gift.

2. I direct that if the donee accepts this gift for the sole purpose of removal of specific parts or organs of my body, then on completion of all necessary procedures, the donee shall deliver my body to my next of kin or other person having legal right to custody of my body to be \_\_\_\_\_ [*cremated or buried*] according to directions in my Will [*or other instrument*].

3. I have attained the age of 18 years, and I am of sound mind. I am not executing this Anatomical Gift under fraud, duress, or undue influence.

4. I make this gift on the condition that the gift be made at no expense to my estate or my family. All expenses or costs associated with this gift shall be borne by the donee or recipient or by an individual or entity on their behalf.

EXECUTED in \_\_\_\_\_, Texas, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Signature of Donor

\_\_\_\_\_  
Printed Name of Donor

**APPENDIX D-1**

**SAMPLE CHRISTIAN PREAMBLES TO A LAST WILL AND TESTAMENT**

Note: A Christian preamble is intended to be used as a source of comfort to mourning family and friends. It is to help reassure them that their loved one died in faith, sure of God's promise of eternal life. It is also employed to be a message of love and encouragement, urging others to trust in Jesus Christ and strengthen their own faith.

Also note that there are many variances within the Christian faiths that will require one to modify or expand upon these provisions.

**Christian Preamble – Sample 1:**

In the name of the Father, Son, and Holy Spirit. Amen. I, (Name), of (City, County, State), publish and declare this to be my Will and hereby revoke all former Wills and Codicils executed by me.

**Christian Preamble – Sample 2:**

In the name of the Father, Son, and Holy Spirit, Amen. I, (Name), of (City, County, State), publish and declare this to be my Will and hereby revoke all former Wills and Codicils executed by me.

First, I want my loved ones to know that I place full confidence and trust in my Lord and Savior Jesus Christ, who promised: "I am the resurrection and the life; he that believeth in Me shall never die." (John 11:25-26)

Second, knowing that the wages of sin is death, I believe that Jesus Christ, the only Son of God, suffered and died, for the forgiveness of all my sins, which I neither deserve nor merit, but I receive it as a free gift of God, who is rich in grace and mercy.

Third, I leave to all of my loved ones the words of our Savior, found in John 3:16: "For God so loved the world, that He gave His only begotten Son, that whoever believes in Him shall not perish but have eternal life." I leave those who survive me the comfort of knowing that I have died in this faith and now have joined my Lord in eternal glory.

Fourth, I praise God for giving me a loving, caring, Christian helpmate in my husband/wife. He/She has been a blessing to me, and a wonderful father/mother to our children. Knowing that we both share our faith in Jesus as our Savior, we will praise the Lord forever in Heaven.

Fifth, I pray that the Lord would guard and protect my children. You are very special to me, and I thank the Lord for you. Through your baptism you have been received into God's family, and I urge you to remain faithful to Christ until you are called home to be with the Lord. I love you and I look forward to eternity with you in Heaven.

Sixth, I pray that the Lord would shower His blessings upon my grandchildren. May the Holy Spirit guide you along the narrow path of salvation through faith in Jesus Christ. I urge you to respect your parents and honor them as your parents have honored me.

Seventh, I recognize that all of my earthly possessions are a gift from God. Therefore, I have made provisions in my Will to continue my Christian stewardship after I have gone to Heaven to be with the Lord. I trust that what I offer as a gift, will be blessed many times over by the Lord in building His Kingdom.

Eighth, my heirs will receive, through me, gifts from God. May you always remember that everything you have is a trust from God. Be good and wise stewards of His blessings, managing wisely and returning to Him a generous portion for the work in His Kingdom.

**Christian Preamble – Sample 3:**

In the name of the Father, Son, and Holy Spirit, Amen. I, (Name), of (City, County, State), publish and declare this to be my Will and hereby revoke all former Wills and Codicils executed by me.

I do hereby testify that I am a Christian. I have placed all my hope of life hereafter in Jesus Christ, the Son of God. His death and resurrection have given my life meaning and make my death a peaceful passage to eternal life in heaven. I want my family and friends to know that for me to live was Christ, and to die is gain. Rejoice with me as I declare my completed faith in Jesus Christ my Savior. I am totally convinced by faith that after this life of joys and sorrow, accomplishments and failures, I will live eternally in heaven. This is possible not because I have earned or deserved it, but because Jesus died in my place. I now live with Him. I want all who read this to know that there is absolutely no doubt in my mind that upon death I will enter heaven. I will do so, not by my own worthiness, but only through the merits of Jesus Christ, my Savior, who paid the price for my soul's redemption through His death on the cross.

I commend my loved ones into the hands of the Lord and encourage them to place their faith and trust in Him alone for their salvation. I ask my children, whom I love, never to forget the instructions Christ has given to us, "Go into all the world and preach the gospel to every nation." Share God's Word with everyone at home and abroad. May God grant you peace, love, and strength as He guides you through this life. Then at the end of time, we will be reunited in heaven as a happy family.

I commit myself to God's care, secure in His love for me and trusting in the salvation purchased for me through Christ's suffering and death. I leave those who survive me the comfort of knowing that I have died in this faith and have now joined my Lord in eternal glory. I commend my loved ones to the protecting arms of God, knowing that He will continue to provide for them despite my absence; and I encourage them to place their faith and trust in Him alone.

I look forward to seeing you all again in our life hereafter, where we will all live with our Lord Jesus.

**Christian Preamble – Sample 4:**

I, \_\_\_\_\_, of the City of \_\_\_\_\_, \_\_\_\_\_ County, Texas, realizing the uncertainty of this life, with full confidence and trust in my Lord and Savior, Jesus Christ, who said, "I am the resurrection and the life; those who believe in Me, even though they die will live, and everyone who believes in me will never die," believe that He died for all my sins on the cross and shed His precious blood for my soul. I know that through my faith in His sacrifice on the cross for me I have eternal life, and referring my heirs to Deuteronomy, the eighth chapter, which says in part, "Do not say to yourself, 'My power and the might of my own hand have gotten me this wealth.' But remember the Lord your God, for it is He who gives you power to get wealth," request that my heirs remember that everything they have is a trust from Him and they are only stewards of what He has given them. I pray they will be good stewards, and I being of sound and disposing mind, memory, and understanding, do hereby declare this to be my Last Will and Testament, hereby revoking any and all former Wills and Codicils made by me.

APPENDIX D-2

SAMPLE ISLAMIC PREAMBLE TO A LAST WILL AND TESTAMENT

I bear witness that there is no deity but Allah, the One, the Merciful, the Almighty--Creator of the heavens and the earth and all therein--God of Abraham, Moses, Jesus, Muhammad, and all the Prophets, mercy and peace be upon them all. He is One God and he has no partner. And I bear witness that the Prophet Muhammad is His Servant and His Messenger and the last of all the Prophets, mercy and peace be upon him. I bear witness that Allah is the Truth, that His promise is Truth, and that the Meeting with Him is Truth. I bear witness that Paradise is Truth and that Hell is Truth. I bear witness that the coming of the Day of Judgment is Truth, there is no doubt about it, and that Allah, who is exalted about all deficiencies and imperfections, will surely resurrect the dead of all generations of mankind, first and last and those in between.

This is my counsel to my relatives and friends, my Muslim brothers and sisters, and all those who remain after me: that they strive to be true Muslims, that they submit to their Creator--may He Be exalted--and worship Him and He alone is to be worshiped, fear Him as He alone is to be feared, and love Him and His Prophet Muhammad with a complete love that is rivaled by nothing besides them. Let them obey Him and hold Fast to His *Shari'ah*. Let them spread and firmly establish His religion of Islam, and let them die only in a state of complete submission to His Will.

I remind them that no man and no woman dies before his or her time. The exact duration of each life span is precisely determined before we are born by the All-Powerful Creator, may He be exalted. Death is tragic only for the one who lived out his or her life in self-deception without submitting to the Creator and preparing for the final return to Him. So, do not preoccupy yourselves with my death, but instead make the proper preparations for your own.

Maintain patience and self-composure as the religion of Islam requires. Islam permits relatives to mourn for no more than three days, although a widow is allowed to mourn for four lunar months and ten days, until her *iddah* (period of waiting) is completed. Wailing and excessive lamentation is forbidden by the Creator, and it reflects only a lack of understanding and dissatisfaction with the Will of the Creator, may He be exalted.

Finally, I ask all my relatives, friends, and all others--whether they choose to believe as I believed or not--to honor my Constitutional right to these beliefs. I ask them to honor this document which I have made, and not to try to obstruct it or change it in any way. Rather, let them see that I am buried as I have asked to be buried and let my properties be divided as I wanted them to be divided.



APPENDIX D-3

SAMPLE BAHA'I PREAMBLE TO A LAST WILL AND TESTAMENT

Background: The Baha'i Faith is a monotheistic religion founded during the mid-nineteenth century in Persia. It has grown into a major worldwide religion with more than five million, perhaps as many as 8 million, followers in over 230 countries. While the Baha'i Faith has its historical roots in Shi'a Islam (as Christianity has its historical roots in Judaism, and Buddhism has its historical roots in Hinduism), it is an independent faith with its own distinct history, philosophy and holy writings. The belief in the unity of all religions is a central underlying principle within Baha'i religious philosophy. The unity of humanity and equality of all persons are other central teachings of the Baha'i faith.

Since 1957, Baha'i religious authority resides not in a formal clergy, but rather in elected governing councils at the local, national, and international levels, with the highest of these being the Universal House of Justice located in Haifa, Israel. There are 182 national spiritual assemblies around the world and more than 1100 local spiritual assemblies in the United States. This network of councils governs the faith and addresses religious matters which may arise.

Note: In the Baha'i faith, there is a distinction between principles and laws. A principle is a guiding value Baha'is apply to help determine the answer to a question while laws are mandatory. Charitable contributions ("Huququ'llah") and the writing of a will are laws. In the Baha'i faith, not only is making a will considered a spiritual duty under one of its laws, but it allows the individual full discretion to specify how his or her property, including the residence, is to be disposed. Failure to have a will is considered a disobedience to the command of Baha'u'llah and a non-fulfillment of a divine obligation.

Will heading

The testator is to head his or her will with an adornment of the Greatest Name of God which can take various forms, based on the word "Baha." Such phrases as "O Thou Glory of the All-Glorious," "In the name of God, the All-Glorious," and "He is the All-Glorious" are acceptable in the western world.

Sample Clause:

[Symbol of God's name in Persian Script]

*The Most Great Name: Ya Baha'u'l-Abha*

*O Thou Glory of the All-Glorious*

*LAST WILL AND TESTAMENT*

*OF*

[Testator's name]

Statement of faith

The following is mere suggestive language which each believer can add to his or her will, modify, or use other language in the context of testifying to the oneness of God:

*I, [Testator's Name], bear witness unto the oneness of God  
in the Dayspring of his revelation.*

*I herein make mention of that which is praiseworthy, so that this Will may be  
a testimony for me in the kingdoms of Revelation and Creation and as a treasure with the Lord,  
the Supreme Protector, the Faithful.*

*I also bear witness that Thou has unsealed the choice Wine with fingers of might and power.*

*"Oh, Son of the Supreme:*

*I have made death a messenger of joy to thee.  
Wherefore doest thou grieve?  
I have made the light to shed on thee its splendor.  
Why doest thou avail thyself therefrom?"*  
--Bahá'u'lláh

### Huququ'llah

A follower is required to make certain charitable contributions (known as the “Huququ'llah” or “Right of God”) during his or her lifetime. The will should make provisions for the payment of any unpaid portion of the Huququ'llah. It is viewed as a debt due from the follower’s estate at the time of his or her death (after cost of funeral and burial and payment of other debts). Therefore, it is to be paid before the rest of the estate is divided.

A will should provide for the pro-rated or unpaid Huququ'llah. Some followers leave it to calculate and pay on death. Some estimate this by using 19% of the estate, after funeral and burial costs have been discounted and any outstanding debts settled. In the U.S., the Huququ'llah can be paid to the Baha'i Huququ'llah Trust currently located in Mayfield Village, Ohio, which is a tax-exempt organization qualifying as a public charity. The following is a sample clause:

*I give, devise and bequeath the pecuniary sum necessary to discharge my personal obligation, and the obligation of my estate, of making a charitable donation to the Baha'i Faith as mandated by Baha'i law. This sum shall be calculated based on Baha'i law governing the payment of 19% of my “profits,” as defined and adjusted as mandated under Baha'i law, for any year or partial year prior to the date of my death which remains unpaid, and 19% of the “profits” earned by my estate to “Huququ'llah.” This bequest should be made payable to “The Baha'i Huququ'llah Trust” (EIN 36-3297839). I recognize and understand that the terms used in making this calculation necessarily differ from the manner in which such terms are defined under Generally Accepted Accounting Principals, United States tax laws, or any other secular definition. I further recognize that the determination of the amount payable as a donation to Huququ'llah could have a significant impact on the taxes due by my estate, and on the other distributions under my Will. Recognizing these limitations, it is my express wish that my Executor make a determination as to the amount of any Huququ'llah charitable payment that my estate should pay on account of any Huququ'llah payments not theretofore made by me, or on account of my estate. In making this determination, the estimates of “profits” and adjustments thereto, all determined in accordance with Baha'i law, shall be in the sole discretion of my Executor and binding on all parties concerned. The Executor may consult, in the Executor's discretion, the Local Spiritual Assembly of the Baha'i in [City, State] for guidance, but in all events the final determination of the Executor shall control and be binding on any person with an interest herein.*

**APPENDIX E**

**CLIENT QUESTIONNAIRE  
FOR RELIGIOUS AND PHILOSOPHICAL PREFERENCES**

**Burial and Funeral Instructions**

1. Does the client wish to name an agent (and alternates) to control the disposition of his/her remains?
2. Is the agent familiar with the client's religious and moral beliefs?
3. Does the client wish to provide specific written directions for his/her burial or cremation?
4. Does the client have any moral or religious convictions regarding the disposition of his remains or that dictate the use or rejection of certain forms of burial preparations?
5. Does the client have any preferences concerning his funeral provider, cemetery, or mausoleum?
6. Does the client have any preferences concerning his funeral or memorial services? Grave marker? Plot?

**Medical Power of Attorney**

1. Whom does the client wish to name as his agent and successor agents?
2. Is the agent familiar with the client's religious and moral beliefs?
3. Does the client have any specific preferences concerning health-care facilities and/or providers?
4. Does the client have any moral or religious convictions that dictate the use or rejection of certain forms of medical treatment?
5. Does the client want to make anatomical gifts or give the agent the power and authority to make these gifts?
6. Does the client want to authorize the agent to determine who will visit the client?

**Directive to Physicians**

1. Does the client want the directive require a second medical opinion as to whether he has a terminal or irreversible condition?
2. Does the client want the directive to require a second opinion as to whether the patient is incompetent or otherwise mentally or physically incapable of communication (and/or specify who is in charge of making that determination)?
3. Does the client want a specified amount of time to pass before withdrawing life support?
4. Is withholding of artificial nutrition or hydration allowed under client's religion?
5. Does the client want to limit intravenous antibiotics and/or any other particular treatments?
6. Does the client want to specify or limit certain types of pain control or treatments?
7. Does the client want desire to maintain consciousness?
8. Does the client desire to die at home?
9. Reiteration of the desire or non-desire to donate one's organs or tissue.

10. Does the client wish to obtain physician assistance with dying to the extent compatible with state law? [Not currently allowed in Texas.] Is it allowed under the client's religion?

### **Anatomical Gifts**

1. Is organ or tissue donation desired by the client and allowed under his religion?
2. If allowed, is it restricted to transplantation only? For family only? For teaching, research, or experimentation?
3. Has the client previously registered as a donor or made a record of his intent to donate?
4. Does the client wish to customize what organ(s) and tissue(s) will be or not be donated?
5. Does client wish to name:
  - an organ procurement organization to be used for transplantation, therapy, research, or education;
  - a hospital to be used for research;
  - a designated individual as the recipient of the part;
  - an eye bank or tissue bank;
  - a forensic science program at a general academic teaching institution (as defined by Section 61.003, Education Code), or a private or independent institution of higher education (as defined by Section 61.003, Education Code); or
  - the Anatomical Board of the State of Texas.

### **Wills**

1. Does the client wish to include a religious preamble or statement of faith?
2. Does the client's religion mandate certain bequests or legacies (e.g., favoring the first born son)?
3. Does the client wish to restrict who can be a beneficiary based on bloodlines? Other qualifications/credentials?
4. Does the client's religion mandate certain persons serve (or not serve) as executor? As guardian of a minor child? As trustee?

### **Trusts**

1. Does the client wish to include a general religious statement of faith? [See samples for wills.]
2. Does the client wish to include a request to apply his religious beliefs to the administration of the trust? [See sample language in Section VII of this article.]
3. Does the client wish to (and/or does his religion dictate that he) specify trust administrative provisions regarding:
  - Discretionary or mandatory tithing (on the settlor's behalf or on behalf of another trust beneficiary)?
  - Consequences of beneficiary's marriage outside of the faith?
  - Consequences upon beneficiary's divorce? Cohabitation? Other?
  - Discretionary or mandatory payments for certain religious education programs?
  - Discretionary or mandatory payments for religious pilgrimages?
  - Restrictions on who can be a trust beneficiary based on bloodlines? Other qualifications?
  - Add provisions favoring the first born son? Other persons?
  - Restrictions on investment standards?
4. Does the client's religion mandate certain persons serve (or not serve) as trustee?